

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29576
Docket No. MW-28809
93-3-89-3-208

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance
(of Way Employes
(Elgin, Joliet and Eastern Railway Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The discipline of forty (40) demerits imposed upon Mr. J. T. Manstis for alleged use of EJ&E Railway Company Truck No. 500 from 12:30 P.M. to 4:15 P.M. on January 21, 1988 without authorization was without just and sufficient cause and in violation of the Agreement (System File DJ-9-88/UM-14-88).

(2) The forty (40) demerits shall be rescinded and the Claimant shall have his record cleared of the charge leveled against him."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

On January 28, 1988, Claimant was instructed to appear for a formal Investigation relating to the charge that he allegedly used the Carrier's truck from 12:30 P.M. to 4:15 P.M., on January 21, 1988, without authorization. It was determined at the Investigation that upon his return of the truck to the Carrier, the Claimant allegedly stated that he needed to get away because he was

having domestic problems and that he just lost track of time. Subsequently, the Carrier assessed the Claimant forty demerit marks as discipline.

The Board has reviewed the record and testimony in this case, and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of making an unauthorized use of Carrier's Truck No. 500 on January 21, 1988. The record reveals that the Claimant admitted his guilt in his statement to the Carrier officer and in his own testimony.

The Organization takes the position that the charge letter was insufficient. However, this Board finds that the charge was sufficient to notify the Claimant as to the nature of the offense with which he was being charged.

Once this Board determines that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary, or capricious.

In the case at hand, the Claimant received forty demerits for his wrongdoing. Given the nature of the offense, this Board cannot find that the Carrier abused its discretion when it issued forty demerits to the Claimant for his admitted wrongdoing. Therefore, the claim will be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of March 1993.